Central Law Journal.

ST. LOUIS, MO., OCTOBER 8, 1915.

RECOVERY UNDER WORKMEN'S COMPENSATION ACT BY DEPENDENTS OF MINOR EMPLOYE.

The Supreme Court of New Jersey holds that the fact that a minor employe gave his weekly wages to his father, and that they were devoted to the support of the family of which the father was the head, the family, consisting of his parents and brothers and sisters under the age of fourteen years, was sufficient "to afford a legal basis for the finding of the trial court that they were actual dependents." Harvey v. Erie R. Co., 95 Atl. 124.

The court says that: "It has been held by this court that it is not essential to the right of a dependent who seeks to recover compensation under the Act that such dependent should be actually, or entirely, dependent upon the earnings of the deceased for the necessities of life, but it is sufficient if it appears that he is a dependent in fact."

It is to be observed that the minor in this case was 18 years of age, and the judgment directed to be entered was for 300 weeks at so much per week. This would carry the compensation over to a time beyond the minor's majority, and then what he would pay into the family would be purely voluntary, if he paid anything.

The theory of workmen's compensation laws, as we gather that theory, is that a wage-earner, who is bound to care for his family, is either injured, disabled or killed. This principle conceivably may be extended to include any member of the family other than the head, who is bound by duty to that head to turn in his earnings to the general fund for family support, unless he has been emancipated. Even this, however, as it may refer rather to release of control than absolving of duty, might not take away right of recovery for his injury or death. Certainly, duty to care for him during injury or his proper burial in case of death would fall on the family and survive emancipation.

We do not, however, appreciate how, if under a system that would give no right to recover for anything but services during minority, a Workmen's Compensation Act, that displaces such system, would carry relief beyond the minority period. If the former system allows recovery for death of a brother, the new law might fairly be construed to take the place of the old law.

The court, however, places the right of recovery on the fact of dependency, and this dependency cannot be presumed to continue except during minority of an infant. The question, therefore, is suggested whether or not a system of law which presupposes dependency means casual dependency or dependency that normally will continue as long as the period of compensation extends.

We observe from the New Jersey Act, that recovery may be by a "widow and father or mother," and by "minor or incapacitated brothers or sisters" and the measure of recovery is for a certain proportion of wages for 300 weeks. In this case there was surviving a father and mother and brothers and sisters, all under the age of 16 years. There was nothing allowed, so far as the father was concerned, but there was allowance for the widow and the brothers and sisters, all minors within the 300 week period of the future.

The New Jersey court construed the Act liberally, viewing it as intending to give relief, at all events, in every case, where there was any sentiment of duty or affection existing between a deceased employe and those the objects of such sentiment and in this we agree with the court.

Another question considered in this case was whether misrepresentation by the minor in overstating his age precluded dependents from recovery. It was ruled that as the misrepresentations were not shown to be the inducing cause for the contract or

the cause of his injury, they were not material.

This ruling also seemed proper, because the right of recovery did not depend upon the existence of the minority, as the statute reads.

The Workmen's Compensation Act of all statutes deserves the most liberal treatment by courts. One of the prime purposes of its enactment by the state was to produce an administrative or working system free from technical obstructions so that delays and litigation should be avoided. The relation of employe to others was not to be greatly regarded and, if a fair claim to recovery could be spelled out of the Act, it should be allowed. This relation was deemed largely a collateral matter. The employer being made liable generally for the employe's death, it is to be deemed immaterial to whom the recovery is to go.

NOTES OF IMPORTANT DECISIONS.

NE EXEAT.—ISSUANCE OF WRIT IN AID OF WRIT OF HABEAS CORPUS.—New Jersey Court of Chancery heid, that in aid of a writ of habeas corpus used as a process in chancery it could issue writ of ne exeat against the respondent. Palmer v. Palmer, 95 Atl. 241.

The writ of ne exeat was applied for concurrently with application for a writ of habeas corpus against petitioner's former wife, who, after refusing to obey a decree in a divorce suit to allow petitioner access to the infant child of the parties and departing from the state, returned there.

It is stated that the writ of ne exeat is in the nature of equitable bail and ordinarily issues on an equitable claim of a pecuniary nature in an amount certain, as to secure the payment of alimony to a wife, but it seems doubtful from decision cited that it could issue to secure the payment of alimony. Yule v. Yule, 10 N. J. Eq. 138. At all events there are cases holding it may issue in aid of injunction. Hayes v. Nillio, 11 Abb. Prac. N. S. (N. Y.) 1167; Bryson v. Petty, 1 Bland (Md.) 177; Williams v. Williams, 3 N. J. Eq. 130.

This case, as seen, involved the enforcement of a marital duty and a decision holding that the order to enforce payment of alimony should be denied, would not be conclusive on such a subject because this might be regarded as a debt, for collection of which only the usual remedies might be appropriate. The duty here sought to be enforced was not personal, but marital, in its nature. The writ was to aid habeas corpus as it would aid an injunction and more appropriate if the former concerned a relative duty and the latter did not.

The court said: "Assuming that there is no precedent for the issuance of a ne exeat to keep a parent within this state to answer the exigencies of an order for access to a minor child by the other parent, no obstacle to the jurisdiction of this court is presented, for chancery will make a precedent to fit a case, novel in incident, which comes within some head of equity jurisprudence." It was therefore ruled that the court could "keep the contunacious defendant within its jurisdiction by a writ of ne exeat, so as to compel obedience to its order for the father's access to the infant child of the parties."

The writ of habeas corpus in this case seemed nothing more than an incident in the case, as conceivably the defendant might have been called before the court for her contumacy by some other process. Indeed the court might have issued an attachment for contempt and no writ of ne exeat would have been needed.

COMMERCE—PICTURE FILMS AS ARTICLES OF FOREIGN COMMERCE.—The Third Circuit Court of Appeals, citing Supreme Court cases, holds that an act of Congress forbidding deposit in the mails or with any common carrier for interstate transaction or to bring into this country from abroad any film or other fictional representation of any prize fight, which is to be, or may be, used for purposes of public exhibition, is constitutional. Weber v. Freed 224 Fed. 355.

This case concerned the bringing to this country from the Island of Cuba of moving picture films of a prize fight, which were offered for entry at one of our ports and by the collector refused admission. It was claimed that thereby the collector was attempting to exercise police power belonging to the states.

The Court cites the Supreme Court as saying, that: "Whatever difference of opinion, if any, may have existed or does exist, concerning the limitations of the power (of Congress) resulting from other provisions of the constitution, so far as interstate commerce is concerned, it is not to be doubted that from the beginning Congress has exercised a plenary power in respect to the exclusion of merchandise from foreign countries, not alone directly in the enactment of embargo statutes, but indirectly, as

a necessary result of provisions contained in tariff legislation. It has also in other than tariff legislation exerted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion. This is illustrated by statutory provisions which have been in force for more than fifty years, regulating the degree of strength of drugs, medicines and chemicals entitled to admission into the United States and excluding such as did not equal the standards adopted."

In applying the statute involved, the Appeals Court says: "In any event the films are articles of commerce, capable of being sold or leased, and the mere fact that the plaintiff has no present intention of using them for any other purpose than exhibition does not change their essential material character or remove them from the class of tangible things that are the subject of commerce in any definition of that word." The statute does not forbid generally the importation of films showing a prize fight, but only if they were intended to be, or could be, used in public exhibition, and there is given to the collector a sort of censorship as to such a possibility. In this way statutes as to drugs, medicines and chemicals are not the same as is this statute. Films of prize fights are not declared to be inherently objectionable, like drugs below a certain standard of strength. And thus this statute is an advance on others, even an advance on our interstate commerce case ruling that lottery tickets may not be transported from one state to another.

It does not, however, seem any advance over the rulings sustaining the Mann White Slavery act, it regarding only the consequences happening after transportation ended, and it seems well within those cases so far as declaring films articles of commerce, is concerned.

RECENT DECISIONS IN THE BRITISH COURTS.

"The death of one of two persons in the lifetime of the other is," said Sargant J. in re Fisher 1915, 1 ch. 302, "a certainty not only in common parlance, but, I think, speaking scientifically, for having regard to the infinite divisibility of time, it seems to me impossible that both should die exactly at the same moment." There was no evidence of the scientific fact; the learned judge assumed that it was so notorious that he could take judicial notice of it. We do not think, however that modern mathematicians or philosophers, not to mention lawyers, are unanimous. In Wing v. Angrave, 8 H. L. C., 125 R. R. 106, Lord Campbell, denying that "where it is left doubtful which of two individuals died first, there is a presumption of law that they died at the same time," added "I will not say that this is impossible, "although time, like matter, is said to be infinitely divisible." So that, although Lord Campbell was willing to assume that time was infinitely divisible, he refused to draw the inference that two events cannot happen at the same time, and in Elliott v. Smith, 22 Ch. D 236, Fry J. assumed that a testator and legatee drowned together died at the same time. Such being the state of the authorities, we venture to submit that Sargant J.'s view that two events cannot happen at the same point of time is not right either in fact or law.

A bequest was made of jewelry, personal ornaments, pictures and lace, "to my dear daughter Florence Julia Swan with remainder in the event of her dying childless"—which event happened—"to my son Francis Edward Lister Swan, and the heirs of his body lawfully begotten." The daughter and son were appointed personal representatives. The daughter possessed herself of certain jewelry and lace, and upon her death childless it was found that certain articles were not forthcoming. Sargant J. held (in re Swan 1915, 1 ch. 289) that a tenant for life receives chattels as bailee or a trustee for those entitled under the ulterior gifts or limitations. It is true that the learned judge may have been in error in regarding the daughter, in this instance as a tenant for life. The question, however was hardly material, for there is ample authority for holding that in the eyes of a court of equity a person with an absolute but defeasible interest in property is to be regarded as a tenant for life for many purposes.

It is a familiar principle that in construing a contract regard must be had to the circumstances existing as the date when it is entered into. Of this elementary rule Liston v. Owners of S. S. Carpathian (1915) 2 K. B. 42, furnishes an example. As a result of the recent outbreak of war between Great Britain and Germany, and there being a risk of capture, a merchant seaman was held entitled to treat the articles as being at an end, and to bargain for a premium in addition to his wages under the articles.

In British Murac Syndicate, Limited v. Alperton Rubber Company, Limited, 31 T. L. R. 361, the company had agreed that the syndicate should have the right, so long as it held 5000 shares of the company, to nominate two of the directors. This agreement was embodied in one of the articles of association of the company. The syndicate nominated two directors

that apparently were not acceptable to the other directors of the company. A meeting of the company was called for the purpose of cancelling the article of association, and this move the syndicate met by applying for an injunction to prevent the company from cancelling the article and for a declaration that their nominees had been duly appointed directors. For the company it was argued that it had an absolute and indefeasible power under the Companies Act to alter its articles, but the Court held on the authorities that a company could be restrained from altering its articles for the purpose of committing a breach of contract, and granted the injunction craved.

Certain recent decisions have bit by bit widened the right of action to a person who has received nervous injury or shock without sustaining an actual blow. Such damages used to be considered too remote for recovery, but not so now. We note here two interesting cases on this question of remoteness of damages. In Campbell v. Henderson, Limited, 1915, 1 S. L. T. 419, the action was for damages in respect of nervous shock causing injuries to health, the shock having been caused by the pursuer seeing her brother run over by a vehicle through the fault of the defenders, the vehicle being at the time negligently driven by their servant. Such damages are as remote as can well be conceived, and we are not surprised that the court held on the facts that the pursuer was not entitled to damages. The distinction was drawn between this case and the previous cases in which damages for shock were awarded, that in them the shock was due to apprehension of danger to the person receiving it; but here it was caused by apprehension of danger, not to plaintiff, but to a third person. "The other case, on remoteness of damage, is Macdonald v. MacBrayne, Limited, 1915, 1 S. L. T. 333. A store was burned through the ignition of a barrel of naptha which had been wrongously delivered to the owner of the store along with two barrels of paraffin. The Court held that the pursuer was entitled to recover the loss caused by the burning of the store and its contents, but that he was not entitled to recover damages for personal injuries sustained whilst attempting to put out the fire. The Court pointed out that, if the pursuer had been in the store at the time and had been injured, that would have been a totally different thing. But that was not so. He volunteered to try to put out the fire primarily in his own interests. He had thereby exposed himself to a risk which he was under no obligation to incur, and which he was not entitled to incur at the expense of the defenders.

DONALD MACKAY.

Glasgow, Scotland.

THE RELATION OF DIRECTORS OF A CORPORATION TO INDIVIDUAL STOCKHOLDERS.

The fiction that a corporation is a person, an entity, has many uses and conveniences in the law of corporations. The fact that it is a fiction has, however, led to many divergent theories in working out the principles of law governing the relations between the constituent parts of a corporation, and as well their relation to those who deal with the corporation.

In the effort to settle difficult questions incident to the great expanse of corporation activity during the past half century, these divergent theories have led to conflicting rules of law and the final settlement of even elementary relations, has not yet been made. From the great mass of decisions, there are, however, some fairly well settled rules.

The fact that corporate property vests in the corporate entity, makes necessary a decision as to just what relation exists between that entity and the directors of the corporation. The control of corporate property being in the Board of Directors, some important questions arise as to the relation of these directors to the corporation as a whole, to the corporate creditors, to the corporate stockholders as a whole, and to individual stockholders. It may, perhaps, be considered as well settled, that the directors are the agents of a corporation and, therefore, act as agents of the corporate property in all dealings with outsiders. In exercising dominion over corporate property it seems generally well recognized that the directors are trustees, or at least fiduciaries, of the corporation itself. The principle is also quite generally accepted that the directors of a corporation bear a fiduciary relation to the whole body of stockholders whose beneficial property interests are under their control; but it is not so well settled as to just what relation the Board of

Directors bear to individual stockholders. As said by Judge Sharswood:[1]

"It is by no means a well settled point what is the precise relation which directors sustain to stockholders. They are undoubtedly said in many authorities to be trustees, but that, I apprehend, is only in a general sense as we term an agent or any bailee intrusted with the care and management of the property of another. It is certain they are not technical trustees."

And yet, it is this personal relation between the stockholders and the directors or other managing officers of a corporation which gives rise to many troublesome questions and which promises to be, in the future development of corporate activity, a question of fundamental importance. The fact that the directors control corporate acts and thereby determine the value of the holdings of corporators, makes the relation an important one from the viewpoint of a private investor. The knowledge gained through his official position gives the director many opportunities for profit at the expense of the stockholder; and the history of modern corporations is replete with instances where the small investor has been taken advantage of by those entrusted with the management of corporation affairs. Of course, where actual fraud is practiced and proof of it available, there is no need to rely upon any relation of confidence to ground an adequate remedy; but where proof of actual fraud is difficult and where no actual malfeasance is charged, there is still an ample field of opportunity for directors to take advantage of the small stockholder and to secure profit both for himself and his associates from stock manipulations. It is to this class of cases where no actual or affirmative fraud is alleged, that this inquiry as to the state of the law is addressed.

As was to be expected, the decision of a law point of this nature would become necessary in applying the principles of law to the problems growing out of the enlarged use of corporations for the transaction of large business during the last half century. Probably the first important decision directly in point was given in Carpenter v. Danfroth,[2] in 1868. In this decision the trust relation between share holders and directors was held to extend only to the management of the general business of the corporation. The refusal to recognize the trust relationship in a personal way, which had been recognized by the same court in passing upon a preliminary injunction granted in the case (1865), was grounded upon the theory that the title to corporate property is neither in the directors nor shareholders. Not having the legal title, therefore, the directors could not, in the court's opinion, be considered as trustees in a personal way for the stockholders. By that judgment directors were held to have the same right as outsiders in the purchase of stock from members of the corporation and owed no duty to such members to apprise them of any condition present or future in corporate affairs which would increase materially the value of the shares.

In 1873 a suit by the Board of Commissioners of Tippecanoe County, Indiana, was brought against a director of a bank for the difference between the actual value of stock purchased by such director from the county, and the price paid. The ground of the suit was the failure to apprise such Board of facts regarding the bank's condition, which made the value of the stock very much more than the nominal price paid. The court refused[3] to recognize any duty which the directors of the bank, as such, owed to the bank's stockholders to divulge any information officially theirs, which would ground a better estimate of the actual value of the stock. In a carefully considered opinion, the Indiana court followed the lead of the Carpenter

(1) Spering's App. 10 Am. Repts. 689.

(2) 52 Barb. 581.

(3) 15 Am. Repts. 245.

v. Danfroth decision and declared against any relation akin to that of a trustee to his *cestuis que trustent* and cited a great many cases upon different phases of the question. These two cases seem to have determined the law in the early history of the problem and have been uniformly cited wherever that decision has been supported in this country.

In 1874 Tennessee followed, in Dederick v. Wilson,[4] with a clear cut decision, relying for their authority upon the New York and Indiana decisions. Rejecting the theory that the officers and directors were trustees in such a sense as to forbid the purchase of shares owned by individual stockholders, except under the stringent rules which govern all transactions between trustee and beneficiary, as to the res involved, they declared unequivocally that such purchases may be freely made unless prohibited by legislative restrictions.

In line with these decisions, somewhat similar questions of fact relating to the right of a stockholder to all the information actually acquired of corporate affairs by a director, have been passed upon by the courts of Illinois,[5] of Michigan,[6] of Massachusetts,[7] and of Washington.[8]

In all of these cases the courts carefully distinguish between the relation of the director to the corporation and the stockholders as a body, and their relation to the stockholders individually. They uniformly concede that the directors sustain the relation of trustees to the stockholders collectively, but maintain that as to the stock itself, the directors having no control or dominion over it whatsoever, there is no such relation. Admitting the confidential relations between them, they seek to limit its application to acts of the directors in connection with the property held by the corporation itself; in other words, to the management of its business; but aside from that they see no application of the trust doctrine to the separate and individual relation between directors and stockholders. The Massachusetts court[9] declared that:

"There is no legal privity, relation or immediate connection between the holders of shares in a bank in their individual capacity on the one side, and the directors of the bank on the other. The directors are not the bailees, the factors, agents or trustees of such individual stockholders."

On the other hand, there is a very respectable following of the doctrine that the relation between individual shareholders and the managing officers of a corporation is essentially that of cestui to trustee. This view of the problem is upheld by some distinguished law writers, and has been confirmed by decisions in important courts.

Mr. Pomeroy,[10] declares:

"The trust character of directors is involved in the very organization of corporations and is necessarily two-fold towards the corporation and towards the stockholders. The doctrines are fundamental and familiar that the corporation itself is a legal personality and holds the full title, legal and equitable, to all corporate property. It is obvious that so far as the trust embraces or is concerned with the corporate property the directors and managing officers occupy the position of *quasi* trustees toward the corporation only; there is no relation of beneficiary and trustee, having the corporate property for its subject-matter, between the stockholders and the directors. This phase of their trust is concerned with and confined to the corporate property; from it arise their fiduciary duties toward the corporation in dealing with such property and the equitable remedies of the corporation for a violation of those duties. On the

(4) 67 Tenn. 108.
(5) Hooker v. Midland Steel Co., 74 N. E. 445.
(6) Walsh v. Goulden, 90 N. W. 406.
(7) Smith v. Hurd, 12 Metc. 371.
(8) O'Neill v. Ternes, 73 Pac. 693.
(9) 12 Metc. 371 Supra.
(10) 3 Eq. Juris. Sec. 109.

other hand, the directors and managing officers occupy the position of *quasi* trustees toward the stockholders alone and not at all toward the corporation, with respect to their shares of stock. Since the stockholders own these shares, and since the value thereof, and all their rights connected therewith are affected by the conduct of the directors, a trust relation plainly exists between the stockholders and the directors, which is concerned with and confined to the shares of stock held by the stockholders; from it arise the fiduciary duties of the directors towards the stockholders in dealings which may affect the stock and the rights of the stockholders therein and their equitable remedies for a violation of those duties. To sum up, directors and managing officers, in addition to their functions as mere agents, occupy a double position of partial trust; they are *quasi* or *sub modo* trustees for the corporation with respect to the corporate property, and they are *quasi* or *sub modo* trustees for the stockholders with respect to their shares of the stock."

In 1874, the Supreme Court of the United States,[11] declared that: "Managers and officers of a company where capital is contributed in shares are, in a very legitimate sense, trustees alike for its stockholders and its creditors, though they may not be trustees technically and in form. They accordingly have no right to seek their own profit at the expense of the company, its shareholders, or even its bondholders."

In line with this principle are several of the more recently decided cases.

Judge Lamar, in Oliver v. Oliver,[12] 1902, takes definite issue with the precedent set in New York and Indiana. The reasoning follows closely the argument of Judge Pomeroy whose text is freely quoted. He calls attention to the fact that the Chief Justice of the Indiana Supreme Court in a dissenting opinion[13] declares that a

"Director does occupy a relation of trust which made him guilty of constructive fraud in acquiring the stock without disclosing facts which enhanced its value."

(11) Jackson v. Ludeling, 21 Wall. 616.
(12) 45 S. E. 232.
(13) Tippecanoe County v. Reynolds.

Judge Thompson in his work on corporations also prefers the dissenting opinion and asserts the decision of the majority.

"Proceeds upon a conception which, if extended, would sanction nearly all of the fraud and injustice which the managers of corporations have committed against the stockholders."

In a carefully considered opinion, Judge Lamar (Ibid) declares that to permit a director who has been placed where he himself may raise or depress the value of the stock, or where he may first know of facts which produce such result, to take advantage thereof and to buy from or sell to one whom he represents, without making a full disclosure and putting the stockholder on an equality of knowledge with himself as to these facts, would offer a premium for faithless silence and give a reward for the suppression of truth.

"It would sanction concealment by one who is bound to speak, and permit him to take advantage of his own wrong. It must not be forgotten that the right to good faith in dealings concerning the stock, is one of the very few which the individual shareholder is in a position to assert in his own name."

Having previously trusted the director with the management of the company, he should not be required when selling his shares suddenly to exhibit an entire lack of confidence. The peculiar powers and special opportunities of directors call for an enlargement rather than a restriction of the rule requiring disclosures between fiduciaries.

In 1904 the Kansas Supreme Court in Stewart v. Harris,[14] declared that the managing officers of a corporation are not only trustees of a corporate entity and property, but also, to some extent and in many respects, trustees for the corporate shareholders. The decision is based upon the broad ground of the con-

(14) 66 L. R. A. 261.

fidential relations there existing, and holds that when two parties occupy a fiduciary or confidential relation and a sale is made by the party reposing confidence to the one in whom such confidence is reposed, that equity will raise a presumption against the validity of the transaction, and that the buyer must show affirmatively, if he wishes to sustain the sale, that the transaction was conducted in good faith and with express knowledge and entire freedom on the part of the other. A director of a corporation having a knowledge of the general affairs of such corporation, because of the trust relation and superior opportunities afforded for acquiring information, before he can rightfully purchase the stock of one not actually engaged in the management of its business, must inform the stockholder of the true condition of corporate affairs. In this carefully written decision Judge Atkinson refers to the Indiana case[15] and declares that the decision there rendered has met with much criticism and "leaves stockholders' interests wholly in charge of the managing officers, and the stockholders their legitimate prey."

As late as 1909 the Supreme Court of Arizona affirms the principle of a fiduciary relation and asserts that the law makes it the duty of an officer or director who is seeking to purchase from a stockholder the latter's holdings, to disclose facts which have come to him by virtue of his relations to the company and not known to the stockholder, or may not be readily ascertained by him, and also to disclose such plans and purposes as the corporation may have for the future bearing upon the value of the stock. The underlying principle of the decision is the duty resting upon the director being the agent of the corporation, and so, in a sense, the stockholders' agent, to take no advantage of the knowledge thus acquired, and which every member of the corporation is entitled to know, in his dealings with such stockholder.

Utah and Ohio in recent cases have also affirmed the same principle.

In Nebraska the trustee relation was declared in one of the earliest cases as reported in the 4th unofficial Nebraska.

In 1896 in Hards v. Platte Valley Imp. Co.,[16] the Supreme Court voiced the doctrine that the

"Stockholder bears the same relation substantially to the corporate officers that the *cestui que trust* bears to the trustee and has for the protection of his interest in the corporation the same remedies that are provided for the beneficiary in a trust estate."

In 1903 the question as to what relation a director bears to a stockholder was clearly in issue in Barber v. Martin.[17] In this suit Mrs. Martin sought to recover from the managing director of the Home Fire Insurance Co., of Omaha, the difference between the selling price of 18 shares of stock sold by her to such director at $50 and the actual value as evidenced by a sale of the entire stock of the company immediately thereafter at $115. In this case it was clearly shown that the purchase by the director was made not only with the knowledge of the prospective sale, but for the purpose of realizing as much profit as possible from the stock purchased. All this was declared inconsistent with the director's trust relation to the stockholders of the company. It is

"Primary knowledge that corporation business is transacted through managing officers. The relation between officer and stockholder is that of trust and *cestui que trust*. The officer cannot use the confidence reposed in him for personal profit. If his conduct is impeached and brought under review, it will be closely scrutinized. The burden was upon Barber to show that he had dealt fairly with the stockholders and hence was inhibited by every rule of

(15) 15 Am. Repts, 245.

(16) 46 Neb. 709.
(17) 67 Neb. 445.

equity and fairness from taking to himself the benefit of a transaction if that benefit was inconsistent with the faithful discharge of his trust."

This principle seems to have received uniform endorsement by the Supreme Court of Nebraska and was again declared in a very recent case, Gund v. Ballard.[18]

From the above summary it is very apparent that the law on the question under discussion is in a decidedly unsettled state. The conflict in decisions seems irreconcilable. On the one hand, in those jurisdictions which see no duty to the shareholders as individuals, there would seem a general disposition to base their views upon the lack of technical trust relationship. The inherently abstract idea of an artificial personality in the modern idea of a corporation, seems to form the ground of all this difficulty. Courts refuse to see a technical trustee in a director of a corporation, from the fact that the legal title to corporate property is not vested in the directors but is in the corporation itself. The difficulty lies then in the legal conception of an artificial person; but it should not be forgotten that this abstraction is a creation of the courts for their convenience, and has, in fact, no actual existence.

Mr. Morowitz[19] declares that:

"A corporation is really an association of persons and no judicial dictum or legislative enactment can alter this fact."

The Wisconsin Supreme Court declares that "the so-called legal entity of a corporation is artificial and that the corporation is a fictitious person and will be so recognized and treated when necessary to the ends of Justice.[20]

The New York Court of Appeals says:

"The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a fiction and has been appropriately described as a figure of speech. Justice should not be defeated by the assumed innocence of a convenient fiction."[21]

While it is generally recognized that the legal title of corporate property resides in the corporate entity, it cannot be denied that the entire dominion as of ownership over such property resides in the directors. Certain it is that the persons comprising the Board of Directors in their aggregate personality are the real legal owners, for all practical purposes, of corporate property and franchises. Equity is said to abhor mere names and to look only to the substance. From this point of view the property of the corporation is, in substance, the property of the Board of Directors, and the shareholder through his ownership of corporate script, enjoys the right of participation in the profits of the corporation. While the legal owner of such script, he is not the legal owner of any particular corporate property. His right of ownership goes only to the right of sharing in the profits. In no proper sense then, could the legal title of corporate property be said to reside in the shareholder. That property is entrusted to the care of the directors who as trustees for him and his associates, owe him a duty to use that property for the benefit of the entire body of shareholders. It would not be difficult, therefore, going only to the substance and disregarding the fiction, to find in the relationship between a director and shareholder the elements of a technical trust, and if such a relation were seen and declared, the fundamental principles of law governing such relation would apply with peculiar force and would accomplish essential justice.

In the marvelous development of modern business and the adaptation of the corporate form of organization to the

(18) 73 Neb. 547.
(19) Priv. Corp. Sec. 227.
(20) 45 Wis. 579.
(21) 24 N. E. 834.

needs of such business, there would seem to be a reason of the most imperative kind that the law upon this particular problem should become definitely settled. If corporations are to be organized to do the large business of the industrial world, there would seem to be need of fostering a form of organization seemingly necessary to meet the widening demands of business. The success of such corporations must, to a large degree, depend upon the confidence which the people in general have in that form of organization to at once accomplish the desired ends and at the same time protect their private interests. Not only must they depend upon the integrity of the officers which they choose to conduct the corporate business, but the law must throw around them such safeguards as will make them satisfied that their capital invested will not be at the mercy of unscrupulous stock jobbers. It would seem more consistent with public policy that the rights of the many in this modern development of an organization for the purposes of large business, should be safe from jeopardy in the hands of the few, in whose hands it becomes necessary to entrust the management of corporate affairs. If the superior knowledge of a director growing out of his official opportunities are to be used in an attempt by himself, or together with a few associates, to crowd out the small stockholder by a manipulation of the affairs of the company, the corporation of the future will soon go into decline as a means of organizing the resources of the many for the accomplishment of great ends. Modern business has completely proven the effectiveness of corporate activity and of aggregate capital. To continue such organizations and to make possible such aggregation of capital, the law should be clear and well defined and should adequately protect each individual investor; and it would seem that much could be done in accomplishing this protection if the trust relation were fully and definitely established between each individual stockholder and the managing directors. The knowledge of the managers should be the knowledge of the parties in interest; for in the final analysis the persons holding the stock really are the corporation.

ANSON H. BIGELOW.

Omaha, Nebr.

CARRIERS OF GOODS—SPECIAL DAMAGES.

CENTRAL OF GEORGIA RY. CO. v. WEAVER.

Supreme Court of Alabama. May 13, 1915.
On Rehearing, June 30, 1915.

69 So. 521.

In an action against a carrier for delay in the transportation of plaintiff's carnival outfit and troupe, evidence consisting of estimates as to the profits he would have earned, if the show had arrived in time, was insufficient as a basis of damages; loss of profits, which are purely speculative, not being recoverable.

McCLELLAN, J. (1) This action by Weaver, appellee, against the railway company, was submitted to the jury on the issues made by the fourth count, and a verdict for $500 damages was returned. The wrong complained of was the delay of the carrier in transporting the plaintiff's shows, and its attached people and performers, from Opelika to Alexander City, in this state, at which latter place the plaintiff had previously engaged with the Tallapoosa County Fair Association to give performances and to afford attractions and amusements; he being entitled to charge admissions for certain of his attractions. The fourth count claims damages for the loss of the "use of the said carnival outfit and people" for one entire day, and alleges that the value of such lost use was $750. It is averred in count 4 that "the defendant knew the purpose for which the plaintiff was moving said show outfit" to Alexander City. There was no ground of the demurrer testing the sufficiency of the allegation with respect to the carrier's knowledge, at the time the contract of carriage was effected, of the special circumstances on which the plaintiff would predicate the carrier's liability for the special damages claimed for the loss of the

use of the outfit for one day. The stated averment of knowledge of the plaintiff's purpose on the part of the carrier was too general, too much a conclusion of the pleader, to avoid the effect of aptly grounded demurrer. The applicable rule is well stated in 3 Hutchinson on Carriers, §1369. Knowledge of the carrier of the general use to which the property may be put will not always suffice to impose liability (for delay in transportation) for loss of the value of the use or of profits or of rental value.

(2.) The only testimony bearing on this matter of the value of the use described is that given by the plaintiff himself. It affirmatively appears from his testimony that the value—of the lost use of the outfit and the people for one day *at Alexander City*—he ascribed to the loss of such use for that day was a pure speculation on his part. He testified that the use on that occasion, one day, was $1,000. On the cross-examination he testified:

"The use of my shows was fixed on the idea of what I could have made with it that day, if I had been there, when I said $1,000. They could not have been used in any other way, except to show there. All that was on the idea of the people patronizing it and taking in admission fees, and it was on that idea that I said the use of it was worth $1,000, based upon what I would have made, if I had been there, on account of the people patronizing me and taking in admission fees."

Other statements by him further confirm the conclusion announced that his testimony on this matter was purely speculative. For instance, he testified that he did not know the rental value at Alexander City of any one of the attractions that went to make up his carnival attractions. It was his obligation to establish the value of the loss of the use of his "shows" *at Alexander City*. This he undertook to do through means of an estimate of what he would have received in admission fees if he had been open for business that day at that place. Necessarily it could not be told what that sum would have been. It would have depended upon the number of people afforded the opportunity to see the attractions, the number that would have desired, that day, to see them, and the number willing and able to pay to see them.

Claims for damages, predicated of the loss of profits, are considered too uncertain to form the basis of a recoverable sum, "which are purely speculative in their nature and depend upon so many incalculable contingencies as to make it impracticable to determine them definitely by any trustworthy mode of computation." Dickerson v. Finley, 158 Ala. 149, 163, 48 South. 548, 552. Any claim for damages for loss of the nature and character asserted by the plaintiff could only be predicated of what admission fees the shows would have received on that day *at Alexander City*. Such a basis is entirely too uncertain, and is affected with too many contingencies incapable of anything approaching definite determination, to allow a recovery as upon it.

It seems that a contrary conclusion on somewhat similar evidence touching a similar inquiry was attained by the Massachusetts court in Weston v. B. & M. R. R. Co., 190 Mass. 298, 76 N. E. 1050, 4 L. R. A. (N. S.) 569, 112 Am. St. Rep. 330, 5 Ann. Cas. 825, and the conclusion there given effect may be said to find support in the few decisions mentioned in the opinion and in the annotator's note. Nevertheless we are unwilling, after due consideration, to apply the rule of that case, and others in its line, to the obviously speculative matter and testimony presented in this record.

The court erred in refusing to the defendant special charge numbered 4, which restricted the recovery, if due, to nominal damages only.

The judgment is reversed, and the cause is remanded.

Reversed and remanded. All the Justices concur, except Gardner, J. (dissenting).

NOTE.—*Recovery for Loss of Use of Property Devoted to Public Exhibitions.*—The effect of the ruling by the majority in the instant case appears to be that sums "purely speculative in their nature" arising out of the use of property are not recoverable as damages, and all such sums are "purely speculative in their nature," if what might be received from such use cannot definitely be determined. The phrase "purely speculative" does not seem to us to include sums approximately to be derived from a wholly legitimate business, such as theatrical exhibitions, any more than sums hoped for and reasonably to be expected to arise out of other business, as, for example, the carrying on of a mercantile business well established for any short period in the future, though it be admitted that profits from a new business may not be the predicate of damages.

Thus the court which decided the instant case held in International Agr. Corp. v. Abercrombie, 184 Ala. 244, 63 So. 549, 49 L. R. A. (N. S.) 415, relying greatly on Sayers v. M. P. R. Co. 82 Kan. 127, 107 Pac. 642, 27 L. R. A. (N. S.) 168, and cases it cites, that one could recover for a crop, that would likely have been produced but for the presence of sulphurous fumes, this to be arrived at by showing what was produced on similar land during the same season, under like mode of cultivation and the like kind of fertilizer. We do not believe any case can be stated where there would be less absolute certainty than in the crop case above referred to. It was certain, however, that there was damage.

In Brokerage Co. v. Campbell, 164 Mo. App. 8, 147 S. W. 545, it is stated as a proposition of

law, that: "The rule against the recovery of uncertain damages relates to uncertainty as to the cause rather than uncertainty as to the measure or extent." It is then said there that: "A person who commits a breach of his contract and thereby injures the other party is not permitted to escape liability because the amount of the damages he caused is uncertain and is not susceptible of accurate proof. * * * The jury are vested with the function of making certain that which in its very nature is uncertain by reducing to a pecuniary value elements which, of themselves, carry no standard by which such value may be measured with certainty." The rule in tort as to this would be no milder than in contract. In Dean v. Railroad, 199 Mo. 397, 97 S. W. 913, it is said: "The law only requires the character of proof of which the particular issue in the case, in the inherent nature of things, is susceptible." The propositions in these Missouri cases appear to us nearly, if not quite, axiomatic.

What, then, would be the nature of proof in such a case as the instant case? Obviously to show what reasonably and probably would be the number of admission tickets that would be purchased. There would be no reason to consider whether one individual or another would have purchased tickets, but it could be shown that at other places there was a certain proportion of the crowds in attendance that did purchase. While there is liberty in all to refrain from purchasing a ticket to a show, there is also liberty in customers to refrain from purchasing from a particular merchant, but the merchant can show his average sales and the proprietor of a show ought to be allowed to show his average sales of tickets of admission under similar circumstances. Statistics may be appealed to in one case as well as in another. The literature of the day shows statistics in many things fully as uncertain as to individuals as the purchase of tickets to a performance and great amounts of money are invested in the giving of performances as a business.

In Weston v. Railroad Co., 190 Mass. 298, 76 N. E. 1050, 4 L. R. A. (N. S.) 569, 112 Am. St. Rep. 330, 5 Ann. Cas. 825, the conclusion was rejected in the instant case. That case, however, cited a well-known English case which applies the rule in Hadley v. Baxendale, 6 Exch. 341, which case has been quite generally accepted in this country, to a case of exhibiting samples of goods at agricultural shows, prevented by the carrier's delay. Simpson v. London & N. W. R. Co., 1 Q. B. D. 274. It was said there by Cockburn, C. J., that: "As to the supposed impossibility of ascertaining the damages, I think there is no such impossibility; to some extent, no doubt, they must be matter of speculation, but that is no reason for not awarding any damages at all." And Field, J., said: "It must be assumed that the plaintiff would make some profit."

In Yoakum v. Dunn, 1 Tex. Civ. App. 524, 21 S. W. 411, it was said: "Appellants contend that the plaintiff was not entitled to recover the probable net profits of an exhibition of the museum at the Dallas fair, because they would be too speculative and uncertain. Perhaps he would not be entitled to recover them as net profits, but he would be entitled to recover for the value of the use of the property at such place and time, and such value could not more properly be determined than by ascertaining what the probable net profits of the exhibition would have been."

An Ontario case concerned delay in shipment of dogs to be exhibited at a dog show. Kennedy v. Am. Exp. Co., 22 Ont. App. 278. The court, in passing on the question of damages assessed by the jury, refused to interfere, saying: "Although I think they (damages) were liberally assessed, I cannot think, however, that we could interfere on any such ground, The amount in such a case as this must necessarily be somewhat speculative." Here "speculative" is given as a reason for not interfering, while the instant case would consider this a reason for interfering.

In Foster v. Railroad, 56 Fed. 434, an opera troupe was caused to lose two performances it was billed for. The jury found for one evening they lost $750 and for the other, $500. The court sustained the verdict and yet it must be thought there was considerable in the way of speculation in arriving at these differing amounts.

The Weston case laid down the rule that the loss is what the use of property "ordinarily earns." This definition does not get us very far away from speculative earning in the sense the Ontario case used such a phrase.

In Leach v. Railroad, 89 Hun. 377, 35 N. Y. Supp. 305, where a theatrical troupe billed to perform on a certain night and $400 in tickets had been sold, one who sold tickets on the occasion was allowed to testify that about one-fourth of the whole amount of tickets were usually sold in advance. This seemed quite speculative so far as the other three-fourths were concerned.

It seems to us that the court in the instant case in counting as contingencies, uncertain in their nature, things as to which there was a fairly reasonable probability, and as it was to be assumed that some loss was suffered, it was right, from the best evidence the nature of the case permitted, to determine or allow a jury to determine what that loss probably was. C.

BOOK REVIEWS.

CURTIS ON THE LAW OF ELECTRICITY.

Mr. Arthur F. Curtis, of New York Bar, co-editor of Street Railway Reports and of Griffin and Curtis on Chattel Mortgages and Conditional Sales, presents a work in which he endeavors to treat the subject of Electricity in a discriminating way. For example, he states such a work should cover all matters pertaining directly to the electric current itself, but it hardly ought to include all the law relating to street cars because they are propelled by electricity, or to telephones and telegraphy for a similar reason.

There is developing in the courts a doctrine in regard to the degree of care by those who handle or sell electricity differentiating it from the cases where ordinary care only is required of a master or a seller.

The cases rightly called electricity cases are considered under appropriate chapters and headings which ought greatly help to give to such a subject its definite scope.

It has been been some seven years since any work on this subject has appeared and since then new subjects such as Electrolysis, Interference with Electric Currents, Electrical Injuries and Conflicting Uses of Elecricity have very greatly developed.

The text of this work is admirable for its conciseness and comprehensiveness of statement and the cases cited and explanatory notes appear to present this law in a very complete way.

This book is bound in law buckram and comes from the well-known publishing house of Matthew Bender & Co. Albany, N. Y. 1915.

AMERICAN DIGEST, VOL. 19. KEY-NUMBER SERIES.

With this volume of the key-number series is introduced the key-number device, to show which our office is not equipped, instead of the usual section mark, thus §. The key-number system, with its key to the appropriate chambers of knowledge in the past and its prophesy to those chambers in the future, brings to the eyes of searchers the little key which is an open *sesame*. To one who reads as he runs the key is the constant reminder of where he should read. By observing the key he will not be apt to stumble.

The present volume is a digest of all decisions of American courts, which have appeared in the National Reporter System, the Official Reports and elsewhere between June 1, 1914, and November 30, 1914, and those which have been digested in the monthly Advance Sheets from July to December, 1914, inclusive.

The cases referred to are as reported in the official reports where the volumes are extant and in whatever other way they appear, as for example in Lawyer Ed. American Annotated Cases and in L. R. A. (N. S.) and as that publication now appears.

In this way the lawyer is referred to all sources either to suit his library or to get the benefit of such annotation as selected reports may supply.

It would be an oft-told tale to speak of the general frame of this digest. It is sufficient to say it is according to the key-number plan.

The volume is in the quarto-size as usual, bound in light brown buckram, durable and handsome in appearance and comes from the home of the National Reporter System, West Publishing Co., St. Paul Minn., 1914.

HUMOR OF THE LAW

"Uncle Joe" Cannon was asked to-day what he thought of the outlook for the Republican party in 1916, and he answered with a story.

"A black man was arrested for horse-stealing while I was prosecuting attorney in Vermilion County," he said, "and was placed on trial after being duly indicted. When his day in court came he was taken before the judge and I solemnly read the charge in the indictment to him.

"'Are you guilty or not?' I asked.

"The black man rolled uneasily in his chair. 'Well, boss,' he finally said, 'ain't dat the very thing we're about to try?'"—New York Herald.

Inspired, perhaps, by the very disturbing recent orders of Mr. Secretary Daniels in the matter of refreshments aboard warships, somebody has rescued from the neglect into which it has fallen of late, the story told of John Branch, who was Secretary of the Navy as long ago as the Administration of General Andrew Jackson. Branch and Tazewell, a contemporary Virginia statesman, were walking along the bank of the Potomac one afternoon.

"Branch," said Tazewell, "I can prove to you that you are on the other side of the river."

"Nonsense," said Branch.

"Done."

Pointing an oratorical forefinger to the Virginia shore, Tazewell began: "Is that not one side of the river?"

"Of course."

"Well, then, is this not the other side of the river?"

"Yes."

"Well, are you not on this side, and if this side is the other side, are you not on the other side?"

"The hat," said Branch, "is on me."

Just then Daniel Webster came up. Branch winked at Tazewell.

"Daniel," said he, "I'll bet you a $10 hat I can prove that you are now on the other side of the river."

"Done," agreed Webster.

"Well, is this not one side of the river?"

"Yes."

"Is that," pointing to the Virginia shore, "not the other side?"

"Yes," said Webster, "but I am not over there."

Branch looked as foolish as a statesman can.

"I guess," he remarked, "that's two hats on me, though I seem to have proved that I've not head enough for one."

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the Westb Pub. Co., St. Paul, Minn.

Alabama 22, 32, 43, 68, 99, 118
Arkansas 14, 24, 96, 117
California 38, 44, 50, 76, 77, 123
Colorado 2, 8, 42, 85, 109, 119
Connecticut 46, 102
Florida 25
Illinois 40
Indiana 82
Iowa 35, 78, 113
Kentucky 3, 13, 31, 48, 61, 74, 84, 101, 104, 125
Louisiana 29, 56, 80, 94
Maryland 20, 27, 52, 58, 63, 64, 83, 128
Massachusetts 6, 100
Michigan 7, 30, 51, 86, 89, 103, 107, 114
Minnesota 21, 81, 106, 127
Missouri 16, 65, 90, 115, 129
Montana 72, 108
Nevada 67, 87
New Hampshire 126
New Jersey 116
New Mexico 53, 66
New York 17, 98
North Carolina 18
Oklahoma 26, 36, 49, 71, 73, 95
Pennsylvania 47
Tennessee 11, 28, 59, 111
Colorado 28, 42, 85, 109, 119
Texas ..... 37, 39, 54, 57, 60, 69, 70, 75, 79, 105, 110, 120, 121, 124.
U. S. C. C. App. 55, 92
United States D. C. 1, 9, 10, 93
Vermont 12, 19
Virginia 4, 15, 23, 33, 45, 62, 88, 97, 112, 122, 130
West Virginia 5, 34, 41, 91

1. **Abatement and Revival**—New Defense.—The devisee of a defendant, in a suit to establish a resulting trust, who was substituted as defendant after all the proofs were taken, should not be permitted to interpose a new defense that the purchaser placed the title in the name of defendant to defraud his creditors.—Boggs v. Bright, U. S. D. C., 222 F. 714.

2. **Action**—Illegal Transaction.—Where a cause of action appears to arise ex turpi causa, it will not be enforced although the complaint does not disclose an illegal transaction, or plaintiff does not require the aid of such transaction to establish his case.—Oliver v. Wilder, Colo., 149 P. 275.

3. **Adverse Possessions**—Paying Taxes.—One cannot acquire adverse title to land by paying taxes thereon notwithstanding the claimant asserted title under a void tax deed so long as he was out of possession.—Kypadel Coal & Lumber Co. v. Millard, Ky., 177 S. W. 270.

4. **Architects**— Approval.—An architect indorsing on a building contractor's final bill the words "O. K." held an approval enabling the contractor to recover balance due.—Scott's Ex'r v. Chesterman, Va., 85 S. E. 502.

5. **Assumpsit, Action of**—Special Counts.—A special count held not demurrable for failure to aver a promise to pay respectively two sums demanded, where such promises were comprehended under the general averment of a promise to pay a larger sum than the aggregate of both items.—Parkersburg & Marietta Sand Co. v. Smith, W. Va., 85 S. E. 516.

6. **Attorney and Client**—Agency.—Attorney, retained to bring ejectment against lessee, held to have no authority to agree that lessee would be indemnified against liability to subtenants if he would surrender the lease.—Smith v. Abbott, Mass., 109 N. E. 190.

7.——Constitutional Law.—Workmen's Compensation Law, so far as it subjects attorneys' and physicians' fees in accident claims, adjusted under its provisions, to the approval of the Industrial Accident Board, is not violative of Const. art. 2, § 12, relating to prosecuting and defending suits in person or by attorney of the suitor's choice.—Mackin v. Detroit-Timkin Axle Co., Mich., 153 N. W. 49.

8.——Disbarment.—An attorney who converts to his own use money intrusted to him by clients for specific purposes will be disbarred.—People v. Kohn, Colo., 149 P. 249.

9. **Bankruptcy**—Attorney-at-Law.—Attorney for trustee in successful action held not entitled to retain compensation from recovery, but bound to pay the entire recovery to the bankruptcy court, and submit to the court his claim for compensation.—In re Stemper, U. S. D. C., 222 F. 690.

10.——Concealment.—The concealment by a bankrupt, during the four months preceding the filing of the petition, of the fact that a deed previously executed by him was a mortgage, is a concealment of property, which may defeat his discharge, under Bankr. Act, § 14b(4).—In re White, U. S. D. C., 222 F. 688.

11. **Banks and Banking**—Cashier.—A cashier of a bank held its chief executive officer, with authority to bind the bank in favor of third persons having no knowledge of any limitations on his authority.—Pemiscot County Bank v. Central-State Nat. Bank, Tenn., 177 S. W. 74.

12.——Protest and Notice.—Where a note is sent to a bank for collection without instructions as to the means of collection, the bank must protest it and give notice of dishonor.—Citizens' Savings Bank & Trust Co. v. Northfield Trust Co., Vt., 94 A. 302.

13. **Bills and Notes**—Collateral.—A provision in a note otherwise negotiable that the maker should in case of depreciation deposit additional collateral, and that a failure would make the entire debt due and payable, does not render the instrument non-negotiable within Negotiable Instruments Act, §§ 1, 5.—Finley v. Smith, Ky., 17 S. W. 262.

14.——Consideration.—A breach of an oral agreement may be relied on as failure of consideration for notes, though it was unenforceable under the statute of frauds.—Hamburg Bank v. Ahrens, Ark., 177 S. W. 14.

15.——Demotive Title.—That a purchaser of a note before maturity for value in good faith, and without notice of defenses available to the maker thereof, upon repurchasing the note was chargeable with knowledge of infirmities therein did not impair his original possession as holder in due course.—Ratcliffe v. Costello, Va., 85 S. E. 469.

16.——Individual Liability.—A note signed by defendant only in his official capacity as agent of a corporation, which was named therein, im-

posed no individual liability on him.—Myers v. Chesley, 177 S. W. 326.

17.——Indorser.—The indorser of a check cannot escape liability on the ground that, under the rules of the clearing house through which it was presented, the drawee was not entitled to return it, where, in fact, the drawee did return it, and the return was assented to.—Columbia-Knickerbocker Trust Co. v. Miller, N. Y., 109 N. E. 179.

18. **Boundaries**—Description.—Line described as running with B.'s line to the head of D. ridge, cornering with B.'s northeast corner, held to run with B.'s line, though his corner was some distance from D. ridge; the rule as to control of natural objects not applying.—W. M. Ritter Lumber Co. v. Montvale Lumber Co., N. C., 85 S. E. 438.

19. **Burglary**—Intent.—Under P. S. § 5751, defining burglary, a breaking and entry is burglarious if done with the intent to commit larceny, whether the larceny done or intended is petit or grand larceny, although petit larceny is not a statutory felony.—State v. Hodgdon, Vt., 94 Atl. 301.

20. **Carriers of Goods**—Confiscatory Rates.—In fixing railroad charges, to give the constitutional prohibition against confiscatory action any beneficial effect, the state's power of regulation must be held invalidly exercised, when it fixes a rate which will not return a fair rate of profit on the specific service regulated.—Pennsylvania R. Co. v. Towers, Md., 94 Atl. 330.

21.——Perishable Property.—Where a highly perishable shipment, delivered to the carrier in good condition, arrives damaged, there is a prima facie, but weak, presumption of negligence.—Presley Fruit Co. v. St. Louis, I. M. & S. Ry. Co., Minn., 153 N. W. 115

22.——Special Damages.—Where a carrier has notice of facts apprising it that a shipper would sustain loss of the use of goods by delay in delivery, measure of damages is value of use during delay.—Louisville & N. R. Co. v. Cheatwood, Ala., 68 So. 720.

23. **Carriers of Passengers**—Mail Clerk.—Where bar across door of railway mail car was removed by employe cleaning the car, with mail clerk's acquiescence, and not restored as promised, railroad company held not liable for resulting injuries to the mail clerk.—Washington & O. D. Ry. v. Carter, Va., 85 S. E. 482.

24.——Proximate Cause.—A carrier is liable for injury to a passenger, from another passenger accidentally hitting him in shooting at the porter to protect himself from assault, as proximately caused by the porter's wrongful act.—St. Louis, I. M. & S. Ry. Co. v. Jackson, Ark., 177 S. W. 33.

25.——Rates.—Where a railroad company alleges that an order forbidding special passenger rates is illegal, and does not present evidence thereon, the order, being prima facie legal, may be enforced by mandamus.—State v. Florida East Coast Ry. Co., Fla., 68 Sol. 27.

26. **Champerty and Maintenance**—Deed to Law.—A deed executed by a grantor who has been out of possession, or has not received rents or profits for one year, is void under the champerty statute.—Hill v. Moore, Okla., 149 Pac. 211.

27. **Constitutional Law**—Due Process of Law.—Laws 1914, c. 824, giving the state board of forestry control over roadside trees, and prescribing the conditions upon which they shall be cut and trimmed, is not invalid as a deprivation of property without due process of law.—Chesapeake & Potomac Telephone Co. of Baltimore City v. Goldsborough, Md., 94 Atl. 322.

28.——Inheritance.—The court was not forbidden by the equality provision of Const. U. S. Amend. 14, to hold that, for purposes of inheritance, the issue of a slave marriage contracted in Louisiana, and there terminated before emancipation, was illegitimate.—Napier v. Church, Tenn., 177 S. W. 56.

29.——Legislative Power.—The Constitution of 1898 being silent as to a constitutional convention, held, that the power to originate proceedings to frame a new constitution rested with the Legislature.—State v. American Sugar Refining Co., La., 68 So. 742.

30.——Workmen's Compensation Law.—The Workmen's Compensation Law, so far as it deprives an injured employe of his common-law action unless he gives notice to his employer that he does not intend to accept it, is not violative of the federal and state Constitutions as depriving the employe of a vested right.—Mackin v. Detroit-Timkin Axle Co., Mich., 153 N. W. 49.

31. **Contracts**—Abandonment.—The protesting of a check given by a contractor in payment to a subcontractor is no justification for abandonment of the contract by the latter, where the mistake in the check is immediately rectified.—Eddington-Griffitts Const. Co. v. Ireland, Ky., 177 S. W. 259.

32.——Alteration.—The parties to a written contract so long as it is executory may alter or modify its terms with or without writing.—Johnson v. McFry, Ala., 68 So. 716.

33.——Disaffirmance.—One who has elected to affirm a contract after learning of the fraud cannot thereafter disaffirm it.—Bradley v. Tolson, Va., 85 S. E. 466.

34.——Entire.—A contract to drive piling, make an excavation, remove an embankment, and provide a pump, at separate stipulated prices, held not a contract of entirety.—Parkersburg & Marietta Sand Co. v. Smith, W. Va., 85 S. E. 516.

35.——Repudiation.—Where defendant, who had contracted to pay for compartments in a mausoleum to be built, repudiated before performance, but, thereafter, by acting on a committee of crypt holders, impliedly withdrew such repudiation, he was liable for the contract price upon performance by the plaintiff.—Iowa Mausoleum Co. v. Wright, Iowa, 153 N. W. 94.

36.——Separability.—A void provision of a contract between husband and wife that neither should contest an action for divorce held not to invalidate the contract wherein C., whom the husband accused of alienating the wife's affections, agreed to pay the wife the difference beween the sum received by her from her husband and the sum claimed by her.—Huber v. Culp, Okla., 149 Pac. 216.

37. **Corporations**—Illegal Purpose.—A corporation, organized to give a deed of trust to secure the debt of another corporation, held organized for an illegal purpose which invalidates the deed of trust.—Taylor Feed Pen Co. v. Taylor Nat. Bank, Tex., 177 S. W. 176.

38.——Officer.—The president and actual general manager of a corporation engaged in selling land was acting within the scope of his authority in employing a selling agent and agreeing that the corporation would pay for his services, though no resolution had been passed appointing him general manager.—Hoffman v. Guy M. Rush Co., Cal., 149 Pac. 177.

39.——Subscription.—Where corporate stock is transferred before the whole of the subscription price has been paid, and the transfer is duly recorded, the transferor is usually discharged from further liability upon the subscription.—Rich v. Park, Tex., 177 S. W. 184.

40. **Courts**—Municipal Courts.—The Chicago municipal court is a court of record, and its judgments must, as other common-law courts, be sustained by its record, except where the practice has been changed by law.—Gillman v. Chicago Rys. Co., Ill., 109 N. E. 181

41. **Criminal Law**—Appeal and Error.—Permitting the use in argument of capiases and returns which had not been introduced in evidence, where the purpose of the argument was to show incriminating conduct and refusal of the court to permit the charge of such conduct to be rebutted, held ground for reversal.—State v. Jarrell, W. Va., 85 S. E. 525.

42.——District Attorneys.—District attorneys should neither endeavor to exclude competent evidence, introduce that of doubtful competency, abuse the defendant, make baseless insinuations against his witnesses, nor commit acts of

disrespect towards the opposing counsel.—Hillen v. People, Colo., 149 Pac. 250.

43.——Intent.—The criminal "intent" which is the purpose to use a particular means to effect the result and accomplish the purpose differs from the "motive," which is the power impelling action to a definite result.—Jones v. State, Ala., 68 So. 690.

44.——Mental Capacity.—Where a person has mental capacity to comprehend the possible and probable consequences of an act criminal in nature and knew its nature and that it was prohibited, he is responsible to the law therefor, however mentally deficient he may otherwise have been.—People v. Oxnam, Cal., 149 Pac. 165.

45. **Damages**—Measure of.—A contractor delaying construction of buildings for the owner having tenants ready and eager to occupy them as soon as completed held liable for loss of rents.—Scott's Ex'r v. Chesterman, Va., 85 S. E. 502.

46.——Mental Anguish.—In action for personal injuries, damages for mental anguish caused by inability to be with plaintiff's sick and dying wife and for his feelings while in cemetery where his wife was buried are too remote.—St. Martin v. New York, N. H. & H. R. Co., Conn., 94 Atl. 279.

47. **Death**—Non-Suit.—Where in a mother's action for the death of her minor son it appeared that the negligence of the father, who was in charge of the child, contributed to the death of both, held that the court properly entered a non-suit.—Darbrinsky v. Pennsylvania Co., Pa., 94 Atl. 269.

48. **Dedication**—Acceptance.—Property owners whose dedication of land for street has been accepted by city and who had not brought proceeding to stop ordered improvement, could not defeat enforcement of apportionment warrants by alleging city's breach of the dedication agreement.—Barnett v. L. R. Figg Co., Ky., 177 S. W. 275.

49.——Platting.—Where land is platted into streets, lots, and blocks, and lots sold according to the plat, the dedication is complete, though some statutory requirements have not been observed.—Kee v. Satterfield, Okla., 149 Pac. 243.

50.——Public Use.—A corporation owning a water supply and engaged in distributing it to land for irrigation pursuant to agreement on a mere private use may, with consent of the owners of the right to receive such water, change the use to a public one.—Franscioni v. Soledad Land & Water Co., Cal., 149 Pac. 161.

51. **Divorce**—Cruety.—That complainant's husband was untidy in his habits and occasionally played cards for small stakes, held insufficient to constitute extreme cruelty.—Cunningham v. Cunningham, Mich, 153 N. W. 8.

52——Desertion.—A separation by mutual agreement is not "desertion," and a voluntary deed of separation in connection with lapse of time and other circumstances may show that an application for divorce was made for a collateral purpose and not in good faith.—Walker v. Walker, Md., 94 Atl. 346.

53. **Easements**—Severance of Tenements.—Ordinarily, no right of way which has been used during the unity of possession will pass on severance of the tenements, unless proper terms are employed in the conveyance to show an intention to create the right de novo.—Michelet v. Cole, N. M., 149 Pac. 310.

54. **Estoppel**—Reliance.—Where the owner of real estate put in circulation a letter reciting a conveyance of the land, intending that a purchaser from a third person should rely thereon, he is estopped to assert his title.—Dillard v. State, Tex., 177 S. W. 99.

55. **Exemptions**—Residence.—A husband and wife, who were residents of Tennessee at the time the suit was instituted, cannot claim exemptions in Arkansas in furniture attached in such suit.—Bynum v. Johnston, U. S. C. C. A., 222 F. 659.

56. **Explosives**—Criminal Law.—Rev. St. § 846, denounces the crime of preparing and placing combustibles and explosives with intent to fire or destroy a ship, though the material placed has not yet been set fire to.—State v. Helle, La., 68 So. 735.

57. **False Pretenses**—Past Event.—To constitute swindling by false pretense, the statement must be of a pretended existing fact or past event, and not of a thing to take place.—Anderson v. State, Tex., 177 S. W. 85.

58. **Fish**—Regulation.—Acts 1914, c. 828, regulating the use of purse nets, held not to prohibit the licensing of nets of less than three inches in diameter of mesh, to catch nonfood fish.—Overton v. Harrington, Md., 94 Atl. 325.

59. **Food**—Manufacture.—In an action for injuries from drinking a tonic containing a poisonous substance, the bottle having been bought sealed from an intermediate dealer to whom the defendant manufacturer had sold it, want of contract or privilege between defendant and the person injured was no defense.—Boyd v. Coca Cola Bottling Works, Tenn., 177 S. W. 80.

60. **Forgery**—Paid Check.—Altering paid check so that it purported to evidence a payment on a note, given after it was paid, held a "forgery" within the Code provision defining forgery.—Bunker v. State, Tex., 177 S. W. 108.

61. **Fraudulent Conveyances**—Burden of Proof.—Where a defendant, during the pendency of an action against him, conveyed all his property to his sister, the burden of proof was on such sister, in an action attacking the conveyance as fraudulent, to show the good faith of the transaction.—McDonough v. McGowan, Ky., 177 S. W. 277.

62.——Burden of Proof.—In a suit by creditors of C. to set aside as fraudulent conveyances to C.'s wife, held that the burden was on the wife to prove that she in good faith furnished the consideration.—Carner v. Middlekauf, Va., 85 S. E. 473.

63.——Gratuitous Service.—Services rendered by son while living at home without express agreement for compensation do not furnish sufficient consideration to sustain a conveyance by the father to the son against the father's creditors.—Sunderland v. Ebling, Md., 94 Atl. 344.

64. **Gifts**—Reservation to Donor.—That the donor of a gift reserves an income for life from the thing given, or required the donee to pay interest for life on a sum given, does not defeat it as a gift.—Howard v. Hobbs, Md., 94 Atl. 318.

65. **Guaranty**—Burden of Proof.—That a guarantor did not read the instrument he signed may be considered on the question of his knowledge of acceptance of the guaranty so as to dispense with notice thereof.—Linro Medicine Co. v. Moon, Mo., 177 S. W. 322.

66. **Habeas Corpus**—Custody of Child.—The natural mother, from whom a child had been stolen, held entitled to its custody as against the foster mother, who took it without knowledge of the theft and gave it the best of care.—Focks v. Munger, N. M., 149 Pac. 300.

67.——Extradition.—A person sought to be extradited may show upon a proceeding in habeas corpus that he is not a fugitive from justice.—Ex parte Roberson, Nev., 149 Pac. 182.

68. **Homicide**—Manslaughter.—To constitute "manslaughter in the first degree," there must be either a positive intention to kill or an act of violence from which ordinarily in the usual course of events death or great bodily harm may result, and it is not necessary that the perpetrator intended or willed the death of deceased.—Jones v. State, Ala., 68 So. 690.

69. **Homestead**—Initiation of.—That the husband and wife had frequently gone over the land in controversy looking for a building site, and had tentatively selected several sites thereon, did not give the land a homestead character, where they had done nothing to dedicate it, or any part thereof, to homestead purposes.—Taylor Feed Pen Co. v. Taylor Nat. Bank, Tex., 177 S. W. 176.

70. **Husband and Wife**—Community Property.—A son in whose name one to defraud his wife takes title to property bought with community funds, to participate in partition of the community estate, must account for the present value of the whole land deeded, and not merely half of it.—Krenz v. Strohmeir, Tex., 177 S. W. 178.

71. **Indians**—Patent to Land.—Where a Cherokee citizen by blood, and a noncitizen, occupy lots scheduled to them jointly, on which they carry on business, it is improper to issue the patent to the noncitizen member of the firm after the death of the Indian member.—Smith v. Kennedy, Okla., 149 Pac. 197.

72. **Indictment and Information**—Quashing.—Because a public prosecutor has ignorantly

or carelessly omitted to indorse names of witnesses upon the information, such fact will not entitle the defendant to quash the information.—State v. McDonald, Mont., 149 Pac. 279.

73. **Infants**—Action.—Where a petition, based on a foreign contract, against a minor for legal services, sought to recover on an express contract, or on a quantum meruit, and did not plead the lex loci contractus, showing that the services were "necessary," held, that it did not state a cause of action.—Marx v. Hefner, Okla., 149 Pac. 207.

74. **Insurance**—Accident.—A clause in an accident insurance policy exempting from liability for injuries occurring while the insured is insane is reasonable, not forbidden by law, and not contrary to public policy.—Interstate Business Men's Accident Ass'n, of Des Moines, Iowa, v. Atkinson, Ky., 177 S. W. 254.

75.——Estoppel.—Where a policy holder stated absolutely that he owned the automobile destroyed, the insurer is not bound to make further inquiries to ascertain whether the statement was true.—Hamilton v. Fireman's Fund Ins. Co., Tex., 177 S. W. 173.

76.——Incontestability. — An incontestable clause in a life policy, issued to a trusted employe of insurer, is binding on insurer.—Dibble v. Reliance Life Ins. Co. of Pittsburg, Pa., Cal., 149 Pac. 171.

77.——Incontestability.—Incontestable clause in a life policy held to prevent insurer from contesting validity of policy on the ground that insured, when applying for the policy, and at all times thereafter, was seriously ill.—Dibble v. Reliance Life Ins. Co., of Pittsburg, Pa., Cal., 149 Pac. 171.

78.——Notice.—An insurance association, which insured property and collected the assessments with knowledge of chattel mortgages thereon, cannot deny liability after loss because of such mortgages or renewals thereof.—E. C. Winson & Son v. Mutual Fire & Tornado Ass'n, Iowa, 153 N. W. 97.

79.——Representation.—A statement by insured as to his habits with reference to intoxicants must be construed as to his habits at the time of his application, not before or after.—Order of United Commercial Travelers v. Simpson, Tex., 177 S. W. 169.

80. **Intoxicating Liquors**—Sales.—Where the intoxicating liquor referred to in an indictment is such as is not generally sold or drunk as a beverage, and defendant is a druggist, he has a right to be informed of all the circumstances necessary to prepare his defense.—State v. Stovall, La., 68 So. 741.

81. **Joint Adventures**—Scope of Agency.—Where a person purported to act solely for himself in his dealings with plantiff, and the dealings were outside of the scope of the joint business in which such person and the defendant company were engaged, held, that the company was not liable for the wrongful acts of such person in such dealings.—Lawrence v. Streeter, Minn., 153 N. W. 126.

82. **Judges**—Removal from Office.—A judge who has been convicted of crime in a court of competent jurisdiction, and who is imprisoned, may, notwithstanding his prosecution of an appeal or writ of error, be removed by the Supreme Court, under Const. art. 7, § 12.—State v. Redman, Ind., 109 N. E. 184.

83. **Life Estates**—Stock Dividend.—A stock dividend, representing earnings devoted to betterments, will be apportioned between life tenants and remaindermen, where earnings accruing during the life estate are included in the income.—In re Northern Cent. Ry. Dividend Cases, Md., 94 Atl. 338.

84. **Limitation of Actions**—Accrual of Action.—Where land was flooded through the unlawful obstruction of a stream by being choked up with slack from coal mine, the statute of limitations did not begin to run on the owner's cause of action until the actual happening of the injuries.—North Jellico Coal Co. v. Trosper, Ky., 177 S. W. 241.

85.——Tolling Statute.—Where ecclesiastical authorities disallowed priest's claim under alleged agreement with bishop, but directed bishop to pay priest an annuity, held, that amounts so paid could not prevent running of limitations against an action on the agreement.—Culkin v. Matz, Colo., 149 Pac. 270.

86. **Master and Servant**—Assumption of Risk.—Where a boss trimmer for a coal company, injured by being pinned between a coal car and the loading apparatus, had authority to reject cars of improper width, he assumed the risk in attempting to remove a block from under such a car.—Lewis v. Wolverine Coal Co., Mich., 153 N. W. 26.

87.——Assumption of Risk.—Where a servant is employed in performing labor which necessarily changes the character of the place for safety as the work progresses, and is consequently likely to become dangerous at any time, he assumes the risk.—Zelavin v. Tonopah Belmont Development Co., Nev., 149 Pac. 188.

88.——Negligence.—Attempt of employer to move scaffolding with insufficient number of men to do the work with reasonable safety, resulting in knocking employe from trestle, held negligence making employer liable.—Chesapeake & O. Ry. Co. v. Newton's Admr', Va., 85 S. E. 461.

89.——Vicious Animal.—In an action for the death of a servant from the kick of a mule, the knowledge of defendant's teamster and barn man that the mule was vicious was sufficient to charge defendant with knowledge thereof.—Robbins v. Magoon & Kimball Co., Mich., 153 N. W. 13.

90. **Mechanics' Liens**—Mistake.—That a mechanic's lien notice named the owner as a partnership instead of a corporation, when the result of an honest mistake not misleading the defendant, will not prevent the acquisition of a lien.—McMillan & Parker v. Ball & Gunning Milling Co., Mo., 177 S. W. 315.

91. **Mines and Minerals**—Penalty.—A covenant of an oil and gas lease imposing a penalty for the lessee's failure to complete wells within three months held to conditionally impose one penalty for the non-drilling of each well, not successive penalties for every three months.—Petty v. United Fuel Gas Co., W. Va., 85 S. E. 523.

92. **Monopolies**—Patents.—A patentee and its officers and agents were not guilty of monopolizing interstate trade and commerce in cash registers, in holding such trade and commerce after securing it by wrongful means, if such trade and commerce was covered by its patents.—Patterson v. United States, U. S. C. C. A., 222 F. 599.

93.——Resale.—A manufacturer cannot, without violating Anti-Trust Act July 2, 1890, in making absolute sale of its product, though in patented cartons, control the price of resale.—United States v. Kellogg Toasted Corn Flake Co., U. S. D. C., 222 F. 725.

94. **Mortgages**—Junior Mortgage.—The holder of a junior mortgage, not a party to executory proceedings on the senior mortgage, cannot appeal from the order of seizure and sale.—J. B. Levert Co. v. John T. Moore Planting Co., La., 68 So. 733.

95.——Penalty.—An agreement in a mortgage to pay an attorney's fee on foreclosure is a contract, and not a penalty.—Gourley v. Williams, Okla., 149 Pac., 229.

96. **Municipal Corporations**—Tax Sale.—That the purchaser on a sale of realty for nonpayment of taxes did not offer to pay subsequent taxes until the last day provided therefor, so that the former owner paid them in the meantime, constituted no fraud upon the former owner thereof.—Cassady v. Norris, Ark., 177 S. W. 10.

97. **Partnership** — Acts Constituting. — An agreement regarding the acquisition of land by defendants for the benefit of themselves and plaintiffs held not enforceable as a quasi partnership.—Shield v. E. S. Adkins & Co., Va., 85 S. E. 492.

98. **Pledges**—Repledge.—Where a note secured by collateral prohibited repledge for an amount in excess of the debt, it was a breach of contract for the pledge to repledge the property for an amount in excess of the indebtedness.—Wood v. Fisk, N. Y., 109 N. E. 177.

99. **Principal and Agent**—Banks and Banking.—A bank cannot escape liability for loss of money forwarded as directed by a depositor's general agent unless the method of forwarding was the usual method.—Bank of Menlo v. J. H. Arnold & Co., Ala., 68 So. 699.

100.——Indemnitor.—Where holder of power of attorney directed C. to employ counsel to collect back rent or terminate lease, held, that

C. could not authorize counsel to agree to indemnify lessee against liability to subtenants if he would surrender the lease.—Smith v. Abbott, Mass., 109 N. E. 190.

101.——Promissory Note.—To execute a non-negotiable instrument, an agent need not be authorized in writing.—Finley v. Smith, Ky., 177 S. W. 262.

102.——Scope of Agency.—That an agent was given authority to sell liquors from a saloon at retail does not, as a matter of law, confer upon him authority to make purchases for his principal.—Quint v. O'Connell, Conn., 94 Atl. 288.

103. **Railroads**—Process.—Return of service in action against receivers of railroad company reciting delivery of copy to "city ticket agent," without any recital as for whom he was agent, held not to show service on the railroad company.—Price v. Delano, Mich., 153 N. W. 7.

104.——Right of Way.—A railroad "right of way" includes not only the land immediately beneath the tracks, etc., but such portions as, in addition, are necessary to the use of the tracks.—Illinois Cent. R. Co. v. Taylor, Ky., 177 S. W. 293.

105.——Warning.—That a brakeman on a freight train gave a warning cry, and a person walking between the tracks stepped in front of the passenger train and was killed, held not to charge the railroad company with negligence.—Barnes v. Texas & N. O. Ry. Co., Tex., 177 S. W. 214.

106. **Sales**—Delivery to Carrier.—Where goods are sold f. o. b. cars at point of shipment, and the buyer is required to furnish the seller a bank guaranty before shipment, and does so, title passes as a matter of law on delivery to the carrier.—Presley Fruit Co. v. St. Louis, I. M. & S. Ry. Co., Minn., 153 N. W. 115.

107.——Rescission.—A buyer who kept a machine and continued to use it until the trial of the seller's action for the price was estopped to claim a rescission of the contract as a defense.—Linderman Mach. Co. v. Shaw-Walker Co., Mich., 153 N. W. 34.

108.——Warranty.—It was the duty of a seller of wheat for spring seeding to know that that delivered was as represented, and if it was not, the responsibility was on the seller, in the absence of an acceptance, with knowledge, by the buyer.—Keeler v. Green, Mont., 149 Pac. 286.

109. **Schools and School Districts**—Contract with Teacher.—A contract with a teacher, entered into by two members of a school board at a special meeting, without notice to or knowledge of the third member, was absolutely void.—Weld County v. Kirby, Colo., 149 Pac. 260.

110.——Teachers.—A teacher may not resort to the courts to recover for services rendered without first resorting to the remedies provided in the school law.—Boyles v. Potter County, Tex., 177 S. W. 210.

111. **Slaves**—Marriage.—Since slaves could not contract, they could enter no valid marriage, and from their unions no civil rights could spring, so that the issue were incapable of inheriting.—Napier v. Church, Tenn., 177 S. W. 56.

112. **Specific Performance**—Part Performance.—Where the purchaser went into and retained possession and made improvements, held, that there was such partial performance of a verbal contract to sell land as entitled the purchaser to compel specific performance.—East v. Atkinson, Va., 85 S. E. 468.

113. **Street Railroads**—Last Clear Chance.—A street railroad company held liable for injuries to a delivery wagon, struck by its car through the negligence of its motorman, notwithstanding plaintiff's employe was negligent in the management of such wagon.—Davidson Bros. Co. v. Des Moines City Ry. Co., 153 N. W. 79.

114.——Negligence per se.—Where one driving a heavily loaded coal wagon, upon approaching a street car track, stopped 30 feet away, and saw a car coming between 400 and 500 feet distant, and thereupon started to cross the track, he was not negligent as a matter of law.—Millette v. Detroit United Ry., Mich., 153 N. W. 10.

115.——Ordinance.—One injured while riding in an automobile which was caught between two street cars, who was himself free from negligence, can rely for recovery on an ordinance limiting the speed of the cars, though he did not know of it.—Speer v. Southwest Missouri R. Co., Mo., 177 S. W. 329.

116. **Taxation**—Property Subject to.—Where flour shipped from the Northwest to New York on through bills of lading, was unloaded and held in Jersey City for repacking and blending it was subject to local taxation.—McCutchen v. Board of Equalization of Taxes, N. J., 94 Atl. 310.

117. **Telegraphs and Telephones**—Rules and Regulations.—A rule of a telephone company requiring every subscriber to pay for long-distance messages originating from his telephone is reasonable.—Southwestern Telegraph & Telephone Co. v. Sharp & White, Ark., 177 S. W. 25.

118. **Trover and Conversion**—Chattel Mortgage.—Chattel mortgagee to whom cotton in which mortgagor had interest was delivered before maturity of mortgage held to have such title and right to possession as would support trover.—Johnson v. McFry, Ala., 68 So. 716.

119.——Tender.—Where a chattel mortgagee took by mistake a desk not covered by the mortgage, the mortgagor must accept the offer of the mortgagee to return anything not covered by mortgage.—Moody v. Sindlinger, Colo., 149 Pac. 263.

120. **Trusts**—Trustee in Invitum.—A son in whose name, one, to defraud his wife, took title to land bought with community property, held a trustee in invitum.—Krenz v. Strohmeir, Tex., 177 S. W. 178.

121. **Vendor and Purchaser**—Marketable Title.—In an action to recover payments on a contract to buy land on account of flaw in the title thereto, that plaintiff has permitted a foreclosure and sale upon the lien which constitutes no defense.—Fordtran v. Cunningham, Tex., 177 S. W. 212.

122.——Misrepresentation.—Reckless misrepresentations by an agent for the sale of land as to the quantity of the land are fraudulent regardless of the agent's knowledge of their falsity.—Bradley v. Tolson, Va., 85 S. E. 466.

123. **Waters and Water Courses**—Easement. A right to water from an irrigation system for irrigation held an easement annexed to plaintiff's land by use prior to and at the time of the sale thereof, which passed with a conveyance of the land, and was binding on the defendant water company.—Franscioni v. Soledad Land & Water Co., Cal., 149 Pac. 161.

124. **Weapons**—Carrying Concealed.—Accused held to have a right to go after his pistol and carry it back to his house to defend himself while compelling a person to leave the house.—McQueen v. State, Tex., 177 S. W. 91.

125. **Wills**—Acceptance of Benefits.—An object of the testator's bounty who accepted benefits under the will, probate of which he contested, is estopped thereafter to attack the validity of the will on appeal from the judgment admitting it to probate.—McElwain v. Smith, Ky., 177 S. W. 244.

126.——Falsa Demonstratio.—Under the rule falsa demonstratio non nocet, a bequest to a city for the benefit of indigent children in its Protestant schools is valid, and the word "Protestant" may be rejected as surplusage.—Peaslee v. Rounds, N. H., 94 Atl. 263.

127.——Testamentary Capacity.—The presumption of incompetency to make a will, which arises from the fact that testator has been adjudged insane and committed to hospital, held rebuttable by proof that his derangement of mind was limited, and had no necessary reference to the subject-matter of the will.—Woodville v. Morrill, Minn., 153 N. W. 131.

128.——Testamentary Character.—Where a gift is fully executed by a complete relinquishment by the donor of all rights in the thing given, that it is not to become effective until after the donor's death does not render it void, as being of a testamentary character.—Howard v. Hobbs, Md., 94 Atl. 318.

129.——Testamentary Character.—Limitation in a deed that the grantors shall have controlling power during their lifetime, and at their death the title shall pass to the grantee, does not make the instrument testamentary.—Wimpey v. Ledford, Mo., 177 S. W. 302.

130. **Witnesses**—Impeachment.—Where motorman, called by plaintiff, testified that a person struck by a car was outside the rails, reliance on physical facts showing the contrary held not an impeachment by plaintiff of his own witness, under Code, § 3351.—Washington & O. D. Ry. v. Jackson's Adm'r, Va., 85 S. E. 496.